

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/10/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ.

CIVIL REVISION PETITION NO.3705 of 2000

AND

C.M.P.NO.19799 of 2000

1. A.M.Thavamani
2. A.M.Nagoor Selvam
3. Meenambal
4. Dhanalakshmi
5. A.M.Muthu
6. A.Dhanushkodi
7. Rakkammal .. Petitioners

-Vs-

1. Malar Rani
2. Murugayee Ammal
3. Tamilarasi
4. Pasupathi @ Malathi .. Respondents

Civil Revision Petitions filed under Section 115 of C.P.C. as stated therein.

!For Petitioner .. Mr.PT.S.Narendravasan

^For Respondent .. No appearance.

:O R D E R

This Civil Revision Petition has been filed against the order dated 25.10.2000 made in I.A.No.450 of 2000 in O.S.No.40 of 1998 by the Court of District Munsif, Madurai, thereby dismissing the application filed by the petitioners who are the plaintiffs in the said suit, under Order VI Rule 17 C.P.C. praying to amend the plaint as per the proposed amendment.

2. Today, when the above Civil Revision Petition was taken up for consideration in the presence of the learned counsel for the petitioners with no representation made on the part of the respondents whose names have been brought forth in the list, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner, what comes to be seen is that it is a suit originally filed by the petitioners praying for a declaration of their title to the suit property and for permanent injunction restraining the defendants from in any manner interfering with the peaceful possession and enjoyment of the suit property and for costs.

3. But, while the suit was under process, at the time when the suit was posted for trial, the petitioners/plaintiffs have filed the application in I.A.No.450 of 2000 praying for an amendment of the plaint to the effect of praying for declaration and possession instead of declaration and injunction as it had been originally prayed for and the lower Court not only giving fair opportunity for both parties to meet with the points but also in full consideration of the materials made available and having its own discussions, has ultimately arrived at the conclusion to dismiss the petition for amendment and has dismissed the same accordingly, as a result of which the petitioners are before this Court seeking the relief on certain grounds as brought forth in the grounds of Civil Revision Petition.

4. The main contention of the petitioners for having switched over from the stand of declaration and permanent injunction to that of declaration and possession is that even though at the time of filing of the suit they were in physical possession of the suit property, still, they were discharged from their physical possession of the suit property by force on 26.3.1998 by the respondents and therefore, in consideration of the vital aspects alleged on the part of the petitioners/plaintiffs to the effect that they were got forcibly evicted from out of their physical possession of the property on 26.3.1998 and the genuineness of the case of the petitioners for the amendment lies in the veracity of the stand taken by them in this manner and the lower Court would find that these petitioners at a later stage of the suit on 11.11.1999 filed yet another amendment petition in I.A.No.740 of 1999 and that there was no whisper about the alleged trespass of the first respondent into the suit property and eviction of the petitioners/plaintiffs on 26.3.1998 itself; that there had been no complaint or anything of that sort; that since in the earlier amendment application, the plaintiffs did not at all disclose any of these allegations much less in Exs.B1 and B2 and therefore, the lower Court was not able to see any reason behind the prayer of the petitioners to amend the plaint and therefore contending that there had been no trespass by the first respondent into the suit property as on 26.3.1998 and that this allegation has been falsely put forth on the part of the petitioners in order to get the plaint amended, has ultimately dismissed the petition for amendment filed by the petitioners.

5. On an overall consideration of the facts and circumstances of the case, the materials placed on record and the arguments of the learned counsel for the petitioners, this Court is able to see that since the petitioners have originally filed the suit for declaration and injunction needless to mention that they should have been in physical possession of the suit property besides being entitled for the suit property. The moment by the amendment petition, the petitioners have come forward to seek for possession that denotes that the petitioners are not in physical possession of the suit property but when the possession got out of their hands, it is up to them to clarify to the satisfaction of the court and the only reason offered on the part of the plaintiffs is that on 26.3.1998 they got forcibly evicted by the first respondent/first defendant by trespassing into the suit property and therefore, they were coming forward to amend the plaint.

6. This statement of forcible eviction of the petitioners from the suit property on 26.3.1998 has to be prima facie established on the part of the petitioners by authenticated proofs and circumstances. Whereas absolutely no iota of proof is placed on record nor any circumstance favours the

petitioners' case to be bona fide.

7. The first instance that is given on the part of the lower court is that subsequent to the date of 26.3.1998 when the petitioners alleged that they were forcibly evicted on 11.11.1999 the petitioners have filed yet another petition in I.A.No.740 of 1999 seeking to amend the plaint and in the said I.A. the incident that is alleged to have taken place on 26.3.1998 had not at all been mentioned. Secondly, no complaint to the police or any other authority has been lodged regarding their forcible eviction from out of the suit property nor anything placed before the court for being properly considered and thirdly even to the present time the petitioners are not in a position to satisfy the court that by any other means to the effect that they were evicted forcibly and the possession was taken by the first defendant and therefore, the only conclusion that this court could arrive at is that there had been no such eviction on 26.3.1998 at all and it is a false pretence enacted for the purpose of the amendment sought for and that the petitioners have not come to the court either in registering the suit praying for declaration and injunction or further in coming forward to file the above amendment application in I.A.No.450 of 2000 with clean hands or with truth or fairness attached to, and it could be well arrived at that the petitioners have not approached the court with clean hands and in these circumstances the only conclusion that this court could arrive at, is that there is no room for this Court to make its interference into the well considered and merited order passed by the lower court in dismissing the petition filed by the petitioner as per its order dated 25.10.2000 and hence the following decision: In result,

(i) the above Civil Revision Petition does not merit acceptance and the same is dismissed;

(ii) the order dated 25.10.2000 made in I.A.No.450 of 2000 in O.S. No.40 of 1998 by the Court of District Munsif, Madurai is confirmed;

(iii) however, in the circumstances of the case, there shall be no order as to costs;

(iv) consequently, C.M.P.No.19799 of 2000 is also dismissed;

(v) however, in consideration of the long pending nature of the suit in O.S.No.40 of 1998, yet another direction is issued to the lower court to expedite the trial proceedings and following the procedures established by law, deliver the judgment on merits and in accordance with law within six months from the date of receipt of a copy of this order.

Index:Yes

Internet:Yes

gr.

To

The District Munsif, Madurai.

□